December 18, 2009

By E-mail to regs.comments@federalreserve.gov

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, DC 20551

Re: Docket Number R-1366

Ladies and Gentlemen:

I am a professional in the mortgage industry and respectfully submit this letter, which highlights major concerns I would like to express.

I applaud the Board in its efforts at reforming the mortgage process so as to better protect consumers. However, I believe that the Board's revised rules go too far. It is my position that many of the motivating factors for the Board's proposal have been addressed due to increased consumer awareness, recently-enacted statutes, and regulations and changes in the secondary market and available loan products. In some cases, consumers have been harmed by the very same statutes and regulations intended to protect them, such as new waiting periods.

Imposing new disclosures and a revised annual percentage rate ("APR") calculation will result in substantial implementation costs which would be borne by consumers as well as lenders. At a time when many mortgage professionals are struggling to stay afloat, I fear that yet another major change in regulatory disclosure and calculation requirements will reduce the pool of professional mortgage lenders. A reduction of lenders is also likely to result in increased costs to consumers. Nevertheless, I understand that the Board is unlikely to respond to requests to withdraw the proposed rules in their entirety, which would be my preference. Therefore, I respectfully request that the Board consider my concerns regarding specific portions of the proposed revisions. In response to the Board's request for comments concerning an implementation timeline, I strongly suggest that the Board not enact a new regulation before 2011 and that any regulatory changes not be effective until at least 2012.

Disclosures at Application

I do not object to providing the new "Key Questions" disclosure; however, I urge the Board to require such disclosure at the earlier of the time of application or payment of a non-refundable fee (instead of before the consumer applies for a loan). Such an approach provides creditors with a clearly-defined time to make the disclosure, is consistent with the Truth-in-Lending Act ("TILA") and would still afford consumers adequate time to shop for and consider the appropriate loan product.

Revised APR Calculation

With all due respect, I question the authority of the Board to revise the finance charge calculation set forth in TILA. Assuming that the Board does have the authority to do so, I fear that the harm to consumers will outweigh the benefits. While I favor simplification of the calculation of the APR, I believe that the proposed change must not occur without a corresponding change in the calculation and definition of "Section 32" or high-cost mortgage loans.

Including the proposed additional fees in the APR will result in fewer loans to consumers seeking relatively small loan amounts because such loans will constitute high-cost loans not made by my employing company. While I am concerned about the fair lending issues associated with imposing minimum loan amounts, it is estimated that they will have to establish minimum loan amounts ranging from between $150.000 and $200,000.

I believe that the Board's proposed analysis estimating a 0.6 percent increase in high-cost loans is conservative. Such impact would be closer to a 20% increase in high-cost loans.

I would like to remind the Board that many states used the federal definition of finance charge and APR in implementing anti-predatory lending legislation. Georgia is one such state; Georgia's "high-cost" mortgage loan threshold is even lower than that set forth under HOEPA. Therefore, the proposed changes will have greater impact on low income consumers in Georgia.

Disclosures Required Within Three Days After Application

I am frustrated by the duplicative but not identical summary of terms required by the proposed regulation and Regulation X. I urge the Board and HUD to work **together** to formulate one set of early disclosures.

I agree that consumers are confused about the definition of "finance charges" and that the words "interest and settlement charges" will be more meaningful to consumers. I believe that consumers want and need to know the total amount of their monthly payment, including escrows. It is unclear, however, whether lenders will have the required information to provide the information required by the new form within three days of application.

There are other changes required by the new disclosures which will be difficult to implement. For instance, I feel there are practical, technical concerns with producing the graph. I am concerned about the absence of a definition for "excellent" relative to credit quality in the comparison graph. While the graph shows a comparison based on credit, it seems that it might be the case that even a consumer with excellent credit will not receive the best available rate due to product choices. Moreover, it will be difficult to calculate and produce a constantly-moving average for each loan type. Furthermore, I question how meaningful the graph will be because price increases might be more pronounced as credit quality declines. Finally, as to the graph, it has been found to be confusing.

The proposed form requires lenders to advise consumers of the amount that the consumer could save as a result of lowering the consumer's APR; however, it is possible that a lower APR might not be available to the consumer. Thus, this section of the disclosure is misleading.

I appreciate that consumers must understand early in the loan process whether their payments can increase. Nevertheless, the manner in which this question is posed in the model disclosure is misleading. A payment increase is possible even with a performing fixed-rate, fully-amortizing loan, such as due to increased escrow amounts. Therefore, I recommend either removing this sentence or adding clarifying language (such as indicating that it applies only to the portion of the payment constituting principal and interest). I have the same concerns with the "Payment Change Limits."

Lenders have expressed concern about their ability to calculate the prepayment penalty at the time the disclosure is required. Under the proposed rule it would be insufficient to advise the consumer of the manner of calculating the prepayment penalty which is how lenders would prefer the disclosure to read.

Lenders have voiced concern about the manner in which the forms must be populated. That is, instead of a "check the box" method, which is relatively easy to populate from a technological perspective, it seems that the form would have to be populated to reflect only the applicable terms as indicated by, for instance, the "[No.] [Yes.]" statements in the payment increase and prepayment penalty sections. I have my doubts as to how lending professionals will accomplish this.

Disclosures Required Three Days Before Consummation

I strongly believe that the recent Regulation Z changes effective July 30, 2009, pursuant to the Mortgage Disclosure Improvement Act ensure that consumers will not arrive at the closing table to discover an impermissible increase in their APR. Moreover, the new RESPA regulatory changes ensure that even non-finance charges will not increase beyond specific tolerances. Therefore, I urge the Board not to require an additional disclosure and waiting period absent an APR change outside of the tolerances. The challenges in the mortgage industry have already increased consumer frustration with the loan process due to the extended time period from application to closing. To impose yet another delay is unwarranted absent a change in the APR outside of the permitted tolerances.

While not set for in the proposed rules, I encourage the Board to revise Regulation Z to provide that *any* overdisclosure of the APR will constitute a permitted tolerance so that creditors need not issue a revised disclosure due to a decrease in the APR. Overdisclosure of the APR does not result in consumers being overcharged at the closing table, and in many cases the additional waiting period harms the consumer. For instance, it could impact the consumer's performance under a purchase and sale agreement or result in additional interest and charges for debts to be paid as part of a refinance transaction. The added delay also impacts interest rate locks resulting in a higher interest rate or additional costs to the consumer.

Of the two alternatives the Board proposes relative to redisclosure, I favor the second approach resulting in redisclosure and an additional waiting period only if the APR changes beyond the tolerance. Otherwise, it could be provided at closing.

Loan Originator Compensation

Of most concern to me is the Board's proposed prohibition on payments to loan originators based upon terms and conditions of the loan. I am confident that implementation of the rule in its proposed form would be severely detrimental to consumers. First, it would discourage loan originators from working with those consumers needing the most protection: first-time homebuyers, credit-challenged consumers, and consumers seeking low loan amounts. Because of the time required to assist these consumers with the loan process, I fear that these consumers would be underserved.

I feel that a change in the loan originator compensation structure would drive away experienced loan originators due to limitation on their income. I feel that I exhibit the highest level of professionalism. While many loan originators are compensated based on loan terms, consumers are educated about their choices relative to interest rate and closing costs in order to decide what best suits them. I strive to serve consumers of all socioeconomic strata. Limiting compensation based on loan terms would likely provide a disincentive to serve lower income consumers. Allowing some variance in loan originator compensation would allow consumers to pay more for additional service. It would also help to ensure that loan originators would still serve more challenging consumers.

The abuses in the market leading the Board to propose the prohibition on loan originator compensation based on loan terms have been corrected by the market, thus rendering the Board's proposal unnecessary. Nevertheless, I understand the Board's desire to protect consumers. Therefore, I support the Mortgage Bankers Association of Georgia ("MBAG") proposal of alternatives to the Board's proposal. MBAG presents the alternatives below in lieu of compensation based on the principal amount of the loan because MBAG's members advise that the principal loan amount generally does not determine loan originator compensation.

One alternative would be to limit the amount of loan originator compensation, such as to 200 basis points. For fair lending reasons among others, many lenders already limit variances in loan originator compensation based on rate in such a manner, allowing some variable loan originator compensation.

A second alternative would be to limit loan originator compensation based on loan terms only for all "high-cost" or "higher priced" mortgage loans as well as those loans with the following features:

Interest only payments;
Negative amortization;
Prepayment penalty; or
Balloon payment.

A third alternative would be to permit variable loan originator compensation in connection with the following loans: FHA, VA, or USDA. The reason for allowing variable loan originator compensation in connection with such products is that agency guidelines already afford special protections to consumers.

A fourth alternative would be to allow loan originator compensation to vary based upon:

Initial principal loan amount;
Loan volume; and
Secondary market compensation.

Of course, the Board may consider each of these alternatives individually or cumulatively.

Steering

I strongly encourage the Board to abandon its proposed rule relative to steering. The proposal is inappropriately paternalistic. It is and should be for the consumer, not the loan originator, to shop and determine which loan is in the consumer's interest.

Many of the terms in the proposed Section 226.36(e) are vague or too imprecise to interpret with certainty. While I strive to act in the consumer's interest, such a vague standard is difficult to interpret. Even language in the "safe harbor" is vague, such as what is in a "significant" number of the creditors with which the originator "regularly" does business; the consumer's expression of interest and "fees." Finally, the information to be presented to consumers under proposed Section 226.36(e)(3)(i)(C) requires countless options and is not a meaningful comparison.

Conclusion

I appreciate the Board's efforts and the consideration it has expressed toward implementation issues raised by the proposed rules. Thank you in advance for your continued consideration of the professionals in the mortgage industry.

Respectfully submitted,

MAIN STREET HOME LOANS

Eva J. Aycock

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